

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030365

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On April 4, 2014, Student filed a motion for stay put. In her motion, Student asks that she be returned to her placement at James Marshall Elementary School (James Marshal), which is her home school. On April 8, 2014, District filed an opposition on the ground that there is no previously agreed-upon and implemented individualized education program (IEP) that defines Student's stay put placement.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325,

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

In support of her motion for stay put, Student submitted a copy of an IEP dated February 12, 2014. However, this IEP does not provide any guidance for determining what constitutes Student's stay put. The document submitted by Student does not contain a signature page indicating whether Student's Mother consented to the IEP. Student provides no evidence that Mother signed the IEP and that District implemented it. Further, assuming for the sake of the discussion here that Mother consented to the IEP and District implemented it, the IEP places Student in a special day class for emotionally disturbed students at Hollywood Park Elementary School, specifically because the offered program was not available at Student's home school of James Marshall. Student has therefore not met her burden of proof to demonstrate that a program at James Marshall Elementary is her stay put.

Additionally, District has provided evidence, through the declaration of District Director of Special Education Rebecca Bryant, which supports its position that a program at James Marshall is not Student's stay put placement. The evidence indicates that Student transferred to District in October 2013 from another school district. The previous school district had found Student eligible for special education and related services and had developed an IEP for her. When she enrolled in District, District offered Student a placement based on the IEP from her previous district. The offered placement was at a school other than Student's home school. Mother declined the placement and enrolled Student at James Marshall.

On December 5, 2013, Mother revoked consent for Student to be in special education. That same day, Mother requested that District assess Student. District conducted the assessment, and convened an IEP team meeting on February 12, 2014. Based upon the results of the assessment, District found Student eligible for special education under the category of emotionally disturbed. District offered Student placement at Hollywood Park in a special day class for emotionally disturbed students. Mother did not consent to the IEP, and therefore, District has never implemented it.

On February 19, 2014, District held a meeting to determine if Student should be disciplined for conduct she had engaged in while enrolled at James Marshall. District recommended Student be placed at an alternative school. The change in placement was based on Student's status as a general education student at the time.

The evidence thus indicates that Student's Mother withdrew Student from special education. Although District subsequently re-assessed Student for special education eligibility at Mother's request, and again found Student eligible, Mother has not consented to the District's offer and has therefore never returned Student to special education eligibility. There is no current IEP that provides special education placement and services to Student

and no IEP that places Student at James Marshall. For these reasons, James Marshall is not Student's stay put placement.

ORDER

Student's motion for stay put is denied.

DATE: April 10, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings